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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,639	01/27/2000	Timothy L. Blucher	2102.0010000	8842
28393	7590	02/16/2005	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVE., N.W. WASHINGTON, DC 20005			CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/491,639	BLUCHER, TIMOTHY L.
	<b>Examiner</b> Stephen J. Castellano	<b>Art Unit</b> 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 08 December 2004 and 28 January 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-7,9,11,28-35 and 38-63 is/are pending in the application.  
4a) Of the above claim(s) 6,7,49-51 and 60-62 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-5, 9, 11, 28-35, 38-48, 52-59 and 63 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date . . . . .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: . . . . .

Claims 8, 10, 12-27, 36 and 37 have been canceled, claims 1-7, 9, 11, 28-35 and 38-63 are pending.

Claims 6, 7, 49-51 and 60-62 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and specie, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5 and 8.

Claims 6, 7, 49-51 and 60-62 have been withdrawn, claims 1-5, 9, 11, 28-35, 38-48, 52-59 and 63 are treated according to their merits.

The means-plus-function limitations of “pan means for holding” and “contoured bottom edge means for providing a sealed bottom” do not invoke 112, sixth paragraph since the third prong of the three part test is not met. The third part of this test states “the phrase “means for” ... must not be modified by sufficient structure, material or acts for achieving the specified function.” The means for holding is modified by “pan” and provides sufficient structure for achieving the function. The means for providing a sealed bottom is modified by “contoured bottom edge” that seals and provides sufficient structure for achieving this function.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 38, 42-45 and 53-56 rejected under 35 U.S.C. 102(b) as being anticipated by Binks.

Binks discloses a pan liner system comprising a pan and a liner (see Fig. 2) made of

polytetrafluoroethylene (TFE or TEFLO) which is a polymeric material capable of withstanding a temperature of at least about 400 degrees F, the polymeric material is formed in the shape of a bag (as shown in Fig. 2 wherein the material is in close contact with the inside contours of the pan) having side edges (the edges that correspond to the junction of two side walls) and a contoured bottom edge (the bottom edge that corresponds to the juncture of a side wall and the bottom), the bottom edge having a single central edge (the central 1/3 portion of the bottom edge that consists of 1/3 of the bottom edge in the middle of two end 1/3 portions on each of its ends) and two contoured edge portions (the two end 1/3 portions), each of said contoured edge portions extending outwardly from one end of the single central edge and joined to one of said side edges, whereby said contoured edge portions substantially eliminate entrapment of food occurring in corners of bags lacking said contoured edge portions.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9, 30-35, 38, 42-48, 52-59 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Geigel and Van Erden et al. (Van Erden).

Binks discloses a pan liner system for forming an improved barrier between a pan and food disposed therein, the system comprising: a pan (11) and a drop-in polymeric (polytetrafluoroethylene (TFE)) pan liner (10) having a contour fit, the pan having a bottom panel and four side walls and a pan top opening and the liner having a wavy shape and somewhat resistant to conformance to the confronting surfaces of the pan when cold, when

heated the liner becomes substantially limp and intimately hugs the surface of the pan as shown in Fig. 2 (see column 5, lines 50-64 and column 6, lines 31-52). Binks discloses the invention except for the contoured bottom edge configuration.

Geigel teaches a bag having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees. Van Erden teaches a liner having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees. It would have been obvious to modify the shape of the Binks liner to have the flat bottom edge and two straight tapered edges motivated by the elimination of the tendency to snag and improved stackability while avoiding the more cumbersome procedures of gusseted bag manufacture and motivated by the freeing of the two bottom corners of the bag from interfering with easy reception and packing of the filled bag in a fairly close fitting carton.

Claims 11, 28, 29, 39, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Geigel and Van Erden as applied to claims 1 and 38 above, and further in view of the M & Q Plastic Products Brochure (the M & Q brochure).

The combination discloses the invention except for the polyamide or polyester material with a 13,000 p.s.i. tensile strength and which is non-blocking. The M & Q brochure teaches a high temperature nylon (polyamide) resin material for bags used in food applications which can withstand temperatures of 400 degrees F, has 13,000 p.s.i. tensile strength and is non-blocking. It would have been obvious to replace the liner material of Ibsch or Ferlanti with the high temperature nylon resin in order to provide a material which is stronger per weight with at least

13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking.

For claim 41, polyesters having high strength and high temperature resistance such as liquid crystal polymer are well known. It would have been obvious to modify the liner material of the combination to be polyester and specifically liquid crystal polyester in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking. It also would have been obvious to modify the nylon to be a nylon-polyester blend in order to add strength to the nylon resin in order to resist puncture and breaking of the liner.

Claims 1-5, 9, 11, 28-35, 38-48, 52-59 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ibsch or Ferlanti in view of Geigel, Van Erden and the M & Q Plastic Products Brochure (the M & Q brochure).

Ibsch discloses a pan liner system comprising a pan (10) with a bottom panel and a sidewall extending upwardly from the bottom panel and a pan liner (the bottom layer of the plurality of laminations 14) having a contoured fit disposed within the pan to cover an interior surface of the pan, the pan liner including a contoured bottom edge (the circular edge that circumscribes the flat bottom), a flexible sidewall extending upwardly from the bottom end (16), an open top end extending upwardly beyond the top edge of the pan's sidewall and being folded over the pan's top edge (17, 18), the pan liner not having dog ears.

Ferlanti discloses a pan liner system comprising a pan (12) with a bottom panel and a sidewall extending upwardly from the bottom panel and a pan liner (10) (the bottom layer of the

plurality of laminations) having a contoured fit disposed within the pan to cover an interior surface of the pan, the pan liner including a contoured bottom edge, a flexible sidewall extending upwardly from the bottom end, an open top end extending upwardly beyond the top edge of the pan's sidewall and being folded over the pan's top edge, the pan liner not having dog ears. The pan liner (10) is made from a material comprising plastic and is made of metal with a polytetrafluoroethylene (TEFLON) film (see col. 3, lines 26-33). Regardless of the unsuitability of some plastics as mentioned in column 1, it seems that Ferlanti is rather clear that plastic is quite suitable. Polytetrafluoroethylene is neither fragile or likely to ignite.

Ibsch and Ferlanti disclose the invention except for the configuration of the contoured bottom edge, the liner isn't a single drop-in type and the liner material isn't high temperature plastic material, with a 13,000 p.s.i. tensile strength which is non-blocking.

Geigel teaches a bag having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees. Van Erden teaches a liner having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees. It would have been obvious to modify the shape of the liner to have the flat bottom edge and two straight tapered edges motivated by the elimination of the tendency to snag and improved stackability while avoiding the more cumbersome procedures of gusseted bag manufacture and motivated by the freeing of the two bottom corners of the bag from interfering with easy reception and packing of the filled bag in a fairly close fitting carton.

The M & Q brochure teaches a high temperature nylon resin material for bags used in food applications which can withstand temperatures of 400 degrees F, has 13,000 p.s.i. tensile strength and is non-blocking. It would have been obvious to modify the liner material of Ibsch or Ferlanti with the high temperature nylon resin liner in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking.

For claim 41, polyesters having high strength and high temperature resistance such as liquid crystal polymer are well known. It would have been obvious to modify the liner material of the combination to be polyester and specifically liquid crystal polyester in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking. It also would have been obvious to modify the nylon to be a nylon-polyester blend in order to add strength to the nylon resin in order to resist puncture and breaking of the liner.

Applicant's arguments filed February 6, 2004, December 8, 2004 and January 28, 2005 have been fully considered but they are not persuasive.

Applicant states that the flat sheet liner of the invention can't anticipate a liner formed in the shape of a bag. It is clear that the liner is flat before it is placed in the interior cavity of the pan. However, the specification contains extreme detail of how the liner is laid within the pan, that heating the pan and liner, softens the liner and pushes out air trapped between the pan and liner, and the liner enters into intimate hugging contact to the pan bottom under content loads.

Therefore, the liner achieves a contour almost exactly like the upper surface of the pan with a flat bottom and four, flat upwardly extending walls. The contoured edge portions fall at the folds between the bottom wall and the side walls and the folds between the adjacent side walls. It is not understood how this doesn't form the shape of a bag.

Applicant mentions that the examiner uses hindsight in rejecting the claims as being unpatentable under section 103. How does applicant know that the examiner didn't make this rejection previously? There doesn't seem to be any basis for this remark.

Applicant states that the key problem solved is the elimination of food in corners of the bag. Applicant accomplishes this by cutting the corners and sealing the corners. The secondary references solve a different problem of excess liner material which causes a tendency to snag, a need to provide complex gusseting, and interference of the bottom corners of the bag within a carton. The solution is the same accomplished by cutting the corners and sealing the corners. It doesn't matter that a different problem is solved, the result is that it is obvious for a different reason to solve a different problem to cut and seal the corners.

**Druin Declarations**

The declarations submitted March 3, 2003 and January 28, 2005 are insufficient to overcome the 103 rejections. The declarations fail to set forth sufficient facts. Dr. Druin statements with respect to the applied references are conclusionary and lack sufficient evidence to support his statements. Dr. Druin may be an expert in the field of plastic conversion industry, however, he is not an expert in the fields related to the applied references or in the field of patent

prosecution. Dr. Druin is a paid consultant and has a financial interest in his association with M & Q Plastic Products, Inc.

**Blucher Declarations**

The declarations submitted February 6, 2004 and January 28, 2005 are insufficient to overcome the 103 rejections. Mr. Blucher provides evidence in the form of testimonials, charts, sales documents and advertisements. However, this evidence doesn't demonstrate or prove commercial success, unexpected results, long-felt but unresolved needs, failure of others, or skepticism of experts. The chart presented as Exhibit C doesn't set forth a comparison of the sales of pan liners with dog ears or non-contour fit pan liners to sales of liners without dog ears or contour fit pan liners, it appears the chart's figures represent total sales of both types of pan liners. There is evidence of a substantial increase in marketing during the sale of the contour fit pan liners. The declaration provides a nexus or connection between applicant's invention and claims 38, 42 and 53. Claims 38, 42 and 53 read on the non-contour fit pan liners (with dog ears) and have been rejected under Rule 102 as being anticipated. The anticipatory rejection can not be overcome by any amount of proof.

In some cases, the testimonial letter reference the fact that applicant solicited or requested the testimonial letters.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under

37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Primary Examiner  
Art Unit 3727

sjc